

Appendix B  
Authorities

In addition to some overall comments, this section contains a draft Presidential Executive Order (Attachment 1, B-1-1) that **includes** a **list** of authorities to be requested upon a declaration of national emergency; and a partial list of emergency authorities (Attachment 2, B-2-1) related to the information contained in Chapter Two of the MMP-- Mobilization Policies and Authorities.

General Remarks. Mobilization planners at all levels **continually** must take steps to develop their **legal** authority to act under emergency circumstances:

-- Agency Heads are responsible for identifying **essential** emergency powers that are either in **place** prior to an emergency or requested immediately when a crisis occurs.

-- Legal Counsel have a continuing responsibility to support agency heads in both emergency planning and emergency **operations**.

Emergency Action Packages (EAP). The Director for Emergency Planning (ODUSD(P)) is **responsible** for creating a variety of EAPs **that** come into play upon the declaration of a **national** emergency. A well-constructed EAP will include all documentation for requesting extraordinary powers in **emergency** circumstances. Agencies **continually** must monitor **existing** EAPs and suggest additions and **deletions**, as necessary.

Waiver of Peacetime Regulations. In times of national emergency, many peacetime reporting requirements and other routine actions are no **longer** appropriate. Agency heads must identify impediments **to** mobilization or **other** national emergencies, then create standby requests for waivers of such impediments. Eventually, some **kind** of blanket waiver authority may be developed to handle impediments **to** **emergency** actions throughout the Department of Defense.

DoD Emergency Authorities Retrieval and Analysis System (DEARAS). DEARAS is a special data base developed and maintained by the Air Force Directorate of Legal Information Services (USAF/JAS) for the General Counsel of the Department of **Defense**. Ultimate responsibility for DEARAS lies **with** the **Under** Secretary of Defense for Policy (USD(P)). The authority for DEARAS is found in DoD Directive 3020.36, "Assignment of Emergency Preparedness Responsibilities to Department of Defense Components." DEARAS uses **laser-disk technology** to manage a **data** base containing the full text of emergency legal authorities recommended by DoD Agencies. The DEARAS data base is an APPROXIMATION of the total **DoD-wide** data base of emergency legal **authorities**. The **eventual** goal of **DEARAS** is to allow managers and attorneys to **access** the entire emergency **authority** data base, throughout the Department of Defense. Until such an electronic search system is **fully** in place, the **data** base manager maintains an index of the **DEARAS** data base to assist planners.



\*\*\*\*DRAFT -- FOR PLANNING PURPOSES ONLY\*\*\*\*

Executive Order \_\_\_\_\_, dated \_\_\_\_\_

Exercise and Delegation of Authority Pursuant to a Declaration of National  
Emergency

\_\_\_\_\_ **F.R.**

By the authority vested in me by the Constitution and statutes of the United States of America, including the "National Emergencies Act," 50 **U.S.C. 1601** et seq., 3 **U.S.C. 301**, and the laws set forth below, and pursuant to a finding that a national emergency continues to exist in light of the current world situation, it is hereby ordered as follows:

Section 1. The following provisions of law are **invoked** to accomplish the stated actions or to suspend the operation of other laws in response to the present national emergency and shall continue in effect until the termination of this emergency or as otherwise specified in the appropriate statute:

Recapture of Lands and Property

<u>STATUTE</u>	<u>ACT/LAW</u>	<u>SUBJECT</u>
64 Stat. 310	Act of June 30, 1950, Ch. 429	Recapture of lands formerly part of Camp Robinson, AR
67 Stat. 54	Act of June 6, 1953, <b>Ch. 107</b>	Recapture of property of the Veterans Administration, Johnson City, TN
68 Stat. 31	Act of March 26, 1954, Ch. 105	Recapture of lands in Windsor Locks, CT
68 Stat. 50	Act of April 12, 1954, Ch. 133	Recapture of lands, formerly part of Camp <b>Butner</b> Military Reservation, NC
68 Stat. 974	Act of August 30, 1954, Ch. 1081	Recapture of lands, formerly part of Fort-Bliss, TX
68 Stat. 980	Act of August 30, 1954, Ch. 1087	Recapture of lands in <b>Klamath</b> County, OR
69 Stat. 68	Act of June 1, 1955, Ch. 111	Recapture of lands in Austin, TX
69 Stat. 138	<b>Act</b> of June 16, 1955, Ch. 146	Recapture of lands near Lake Guernsey, <b>WY</b>
69 Stat. 293	Act of <b>July</b> 11, 1955, <b>Ch. 305</b>	Recapture of lands formeriy part of Fort Devens, MA
70 Stat. 550	Act of July 14, 1956	Recapture of lands in the vicinity of Williamsburg, VA

<u>STATUTE</u>	<u>ACT/LAW</u>	<u>SUBJECT</u>
70 Stat. 590	Act of <b>July 20, 1956</b> , Ch. 649	Recapture of" land in Montgomery, WV
70 Stat. 697	Act of July 27, 1956, Ch. 753	Recapture of land in Bexar County, TX
70 Stat. 793	Act of <b>August 1, 1956</b> , Ch. 823	Recapture of <b>Clackamas</b> National Guard Target Range, <b>Clackamas</b> , OR
71 Stat. 479	<b>P.L. 85-204</b> , Section 3	Recapture of <b>Esler</b> Field, LA
71 Stat. 516	<b>P.L. 85-236</b>	Recapture of part of Veterans' Administration Center Reservation, Los Angeles, CA
72 Stat. 401	<b>P.L. 85-545</b>	Recapture of land in York County, VA
71 Stat 404	<b>P.L. 85-548</b> , Section 4	Recapture of land in Boston Neck, Narragansett, Washington County, RI
73 Stat. 595	<b>P.L. 86-323</b> , Section 4	Recapture of land formerly part of Army & Navy General Hospital Reservation, Hot Springs National Park, AR
74 Stat. 370	<b>P.L. 86-611</b> , Section 2(b)	Recapture of part of Des <b>Plaines</b> <b>Public</b> Hunting and Refuge Area and Joliet Arsenal Military Reservation, Will County, IL

Military and Defense-Essential Civilian Personnel

<b>10 U.S.C.</b> 526	<b>Distribution</b> and Strengtn of Field- Grade Officers (above O-3)
10 <b>U.S.C.</b> 644	Promotion, involuntary retirement, and separation of commissioned officers
10 <b>U.S.C.</b> 2632(a)	Transportation of private-plant personnel engaged <b>in</b> defense production
10 <b>U.S.C.</b> 5451	Distribution in grade of <b>Navy and</b> Marine Corps office:s
33 <b>U.S.C.</b> 855	Transfer of National Oceanic and Atmos- pheric Administration <b>commissioned</b> officers to the Military Departments
40 <b>U.S.C.</b> 276a-5	Wages of laborers and mechanics

STATUTE

SUBJECT

46 U.S.C. 8103(h)(1)

Citizenship and Naval Reserve requirements for personnel manning documented vessels

10 U.S.C. 673

Order up to one million members of the Ready Reserve to active duty up to 24 months

10 U.S.C. 7224

Secretary of the Navy authority to designate persons to be carried on naval vessels at Government expense

42 U.S.C. 217

Use of Public Health Service commissioned corps as a branch of the land or naval forces

Control of Shipping and Vessels

33 U.S.C. 955

Transfer of National Oceanic and Atmospheric Administration Vessels, equipment and stations to the Military Departments

46 U.S.C. 825

Restrictions on the transfer of shipping facilities

46 U.S.C. 1241(b)(1)

Waiver of requirement to ship 50% on privately owned U.S. flag vessels

46 U.S.C. 1242(a)

Authority to requisition, purchase, or charter ships owned by U.S. citizens

50 U.S.C. 191

Authority to control ocean-going vessels in U.S. waters

50 U.S.C. 196-198

Authority to seize non-U.S. owned vessels lying idle in U.S. waters.

50 U.S.C. App. 1744(a)

Use of ships in the National Defense Reserve Fleet (NDRF)

Defense Material

10 U.S.C. 2366

Testing of certain weapons systems and munitions

10 U.S.C. 2404

Acquisition of petroleum products

STATUTESUBJECT

40 U.S.C. 484(e)(3)

Disposal of urban lands and acquisition and/or change of use of real property

50 U.S.C. 98(f)

Disposal of materials in the National Defense Stockpile

50 U.S.C. 98-98(h) and 98(h)-(1)

Release of stockpiled strategic and critical materials

50 U.S.C. 167c(d)

Sale, transportation, and acquisition of supplies of helium

50 U.S.C. 1511-1516

Suspension of restrictions on chemical and/or biological agents

50 U.S.C. App. 2071 et seq.

Priorities and allocations of materials and production facilities; air carrier aircraft, shipping and port facilities; and petroleum, gas, solid fuels, and electric power

50 U.S.C. App. 2091 et seq.

Financial incentives for the expansion of productive capacity and supply

10 U.S.C. 2304(a)(1), (2), and (16)

Exemption of certain purchases and contracts from formal advertising requirements

Defense Contracts

31 U.S.C. 203 and  
41 U.S.C. 41

Reduction and/or set-off **against** assignees of DoD contracts

43 U.S.C. 1341(C)

Suspension of leases of outer Continental Shelf lands

50 U.S.C. App. 468

Production of defense goods

50 U.S.C. 1431-1435

Exemption of national defense contracts from certain statutory limitations

50 U.S.C. App. 2158

Voluntary agreements with industry

Defense Construction

10 U.S.C. 2808

Use of unobligated military construction funds for construction that supports the use of armed forces required by a national emergency

STATUTE

SUBJECT

Administrative

50 U.S.C. 1641

Index and file of significant  
Presidential orders issued under  
the declaration of national  
emergency

Section 2. In accordance with Sections 2 and 3 of **E.O.** 12396 of December 9, 1982, the Secretary of Defense is hereby delegated the authority vested in the President to exercise all powers pertaining to the personnel laws affected by 10 **U.S.C.** S26 and 644.

Section 3. The Secretary of Defense is hereby delegated the authority vested in the President to exercise all powers pertaining to the matters indicated in section 1, to include the power to dispose of materials in the National Defense Stockpile pursuant to 50 **U.S.C.** 98(f) and the power to implement an industrial production surge pursuant to 50 **U.S.C.** App. 468.

(Signed by the President)

The White House

Dated \_\_\_\_\_



## PARTIAL LIST OF EMERGENCY AUTHORITIES FOR PLANNING

The following pages summarize SOME executive powers that are available in peacetime or gained commensurate with a specified level of emergency.

### Powers Available During an Emergency That Do Not Require a Formal Declaration of National Emergency

#### Personnel

<u>U.S. Code</u>	<u>Description</u>	<u>When Applicable</u>	<u>Reference*</u>
16 U.S.C. 673b	Call-up of 200,000 Selected Reservists	War or determination of need by President	108
10 U.S.C. 673c	Stop-Loss	Determination of need by President	N/A
10 U.S.C. 688	Recall of Retired members with more than 20 years active duty	Determination of need by Service Secretary	N/A
10 U.S.C. 712	Detail of Service members to assist other countries in military matters	Presidential determination or national emergency	117
10 U.S.C. 2602(a)	Acceptance of American Red Cross cooperation and assistance	Presidential determination of necessity	126
10 U.S.C. 2604(a)	Cooperation with and assistance to United Seaman's Service	Presidential determination of necessity	127
14 U.S.C. 3 49 U.S.C. 1655	Coast Guard to operate as a service of the Navy in time of war	When the President directs or upon declaration of war	225
14 U.S.C. 331	Recall of retired Coast Guard officers	War or national emergency	227
14 U.S.C. 359	Recall of retired Coast Guard enlisted members	War or national emergency	228

#### Control of Ships and Vessels

10 U.S.C. 351	Arming of American vessels or aircraft	War or determination of need by President	97
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\*Reference number is to the "Digest of War and Emergency Legislation Affecting the Department of Defense" (last published in 1983).

### Control of Ships and Vessels

<u>U.S. Code</u>	<u>Description</u>	<u>When Applicable</u>	<u>Reference*</u>
18 <b>U.S.C.</b> 963	Detention of armed vessels during a war in which the United States is neutral	Any war in which the United States is neutral	242

### Defense Contracts

10 <b>U.S.C.</b> 2404	Contract restriction wavier during an energy <b>emergency</b>	Determination of the Secretary of Defense	N/A
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### Defense Materiel

41 <b>U.S.C.</b> 1314	Acquisition and use of natural resources	When necessary for national defense or in time of war	307
50 <b>U.S.C.</b> 98-98(h) and 98(h)-(4)	Stockpiling, disposal, and release of critical and strategic materials	National emergency	344
50 <b>U.S.C.</b> App. 468	Place mandatory orders for prompt delivery of material or articles for use by armed forces	Presidential determination	363

### Defense Production

• 50 <b>U.S.C.</b> App. 2091-2094 and 2166(a) and (b)	Expansion of productive capacity and supply	Presidential determination	373
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### Defense Transportation

50 <b>U.S.C App.</b> 2071-2073 and 2166(a) and (b)	Obtain priority service for CONUS transportation services	Presidential determination	372
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\*Reference number is to the "Digest of War and Emergency Legislation Affecting the Department of Defense" (last published in 1983).

## Powers Available Under a Presidential Declaration of National Emergency

### Personnel

<u>U.S. Code</u>	<u>Description</u>	<u>Reference*</u>
10 U.S.C. 673	Order up to one million members of the-Ready Reserve to active duty for not more than 24 months	107
10 U.S.C. 7224	Gives Secretary of the Navy authority to designate persons to be carried on naval vessels at Government expense	194
33 U.S.C. 855	Transfer of commissioned officers, ships, stations, and equipment of the NOAA to a Military Department	281
42 U.S.C. 217	Use of Public Health Service (PHS) commissioned corps as a <b>branch of</b> land or naval forces	308

### Defense Communications

47 U.S.C. 706	Authority to suspend or amend FCC rules and regulations	328
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### Defense Construction

10 U.S.C. 2808	Authority to use unobligated military construction funds for construction that supports the use of armed forces required by a national emergency	134A
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### Control of Ships and Vessels

46 U.S.C. 835	Restrictions on the transfer of shipping facilities	320
46 U.S.C. 1241(b)(1)	Waiver of requirement to ship <b>50%</b> on privately owned U.S. flag vessels	324
46 U.S.C. 1242(a)	Purchase, requisition, or charter of vessels owned by U.S. citizens	325
50 U.S.C. 191-195	Authority to control ocean-going vessels in U.S. waters	346
50 U.S.C. 196-198	Authority to seize <b>non-U.S.</b> owned vessels lying idle in U.S. waters	347

\*Reference number is to the "Digest of War and Emergency Legislation Affecting the Department of Defense" (last published in 1983) .

<u>U.S. Code</u>	<u>Description</u>	<u>Reference*</u>
50 <b>U.S.C. App.</b> 1744(a)	Composition <sup>*</sup> of ships in the National Defense Reserve Fleet ( <b>NDRF</b> )	370
<u>Defense Contracts</u>		
50 <b>U.S.C.</b> 1431-1435	Exemption of national defense contracts from certain statutory limitations	350
<u>Defense Materiel</u>		
50 <b>U.S.C.</b> 1511-1516	Suspension of restrictions on chemical and biological agents,	351
50 <b>U.S.C.</b> 1641	President and executive agencies must maintain index and file of significant Presidential orders issued under the declaration of national emergency	N/A

\*Reference number is to the "Digest of War and Emergency Legislation Affecting the Department of Defense" (last published in 1983).

Powers Gained by Congressional Declaration of Emergency and Not Available by Presidential Declaration

Personnel

<u>U.S. Code</u>	<u>Description</u>	<u>Reference*</u>
10 U.S.C. 511(C)	Extension of term of service for an enlisted member transferred to a Reserve component	100
10 U.S.C. 672(a)	Authority to order any member or unit of a Reserve component to active duty for the duration of hostilities, plus 6 months (including standby and retired reservists)	106

\*Reference number is to the "Digest of War and Emergency Legislation Affecting the Department of Defense" (last published in 1983).

## Other Powers Essential to the Mobilization Effort

### Personnel

<u>U.S. Code</u>	<u>Description</u>
10 <b>U.S.C.</b> 565	Suspension of <b>laws</b> for promotion, mandatory retirement, or separation of permanent regular warrant officers
10 <b>U.S.C.</b> 599	Suspension of laws for promotion, mandatory retirement, or separation of permanent reserve warrant officers
10 <b>U.S.C.</b> 603	Appointment by the President of any qualified person to any commissioned officer grade in any Service up to the grade of major general or rear admiral (upper half)
10 U.S.C. 673(c)	Stop loss (in case this authority is not invoked prior to a Presidential declaration of national emergency)
10 U.S.C. 697(d)	Involuntary extension of active duty agreements for reserve component members
10 <b>U.S.C.</b> 681(C)	Number of retired general officers and/or flag officers who may be on active duty
10 <b>U.S.C.</b> 3202(c)	Suspension of laws prescribing the ratio of Army general officers on active duty to the total number of commissioned officers